

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/13/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-002165

FILED: _____

STATE OF ARIZONA

WADE J SKALSKY

v.

ARMAND E DRAGONE

JOHN A O NEILL

PHX MUNICIPAL CT
REMAND DESK CR-CCC
HONORABLE PATRICIA KIRTLEY
PHOENIX MUNICIPAL COURT
300 W JEFFERSON
PHOENIX AZ 85003

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8947258; #8947258

Charge: ASSAULT
THREATENTING OR INTIMIDATING

DOB: 01/12/65

DOC: 03/03/00

This Court has jurisdiction of this appeal pursuant to the
Arizona Constitution Article VI, Section 16 and A.R.S. Section

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12-124(A). This case has been under advisement and submitted to the Court without oral argument. This Court has considered and reviewed the record of the proceedings from the trial court, the exhibits made of record and the memoranda of both parties.

The Appellant was accused of Assault, a class 1 misdemeanor and Threatening or Intimidating, also a class 1 misdemeanor. Both crimes were alleged to have occurred on March 3, 2000. On November 2, 2000, a bench trial was held before the Honorable Patricia Kirtley in the Phoenix Municipal Court. Judge Kirtley found Appellant guilty on both charges and sentencing occurred November 21, 2000. Judge Kirtley suspended sentence for a period of two years and placed Appellant on probation, and Judge Kirtley ordered as a term of probation that Appellant serve 92 days in jail, with 90 days of jail suspended upon successful completion of probation, to include an anger management program and that Appellant not harm, threaten, or harass the victim, Jeffrey Kanak.

The first two issues presented in Appellant's Memoranda concern the trial court's alleged review of evidence which was not admitted at trial. Specifically, Appellant claims that the court reviewed and considered a copy of the police report which was marked, but not admitted.

The record does not support the Appellant's contention. The record reflects in the reporter's transcript of November 2, 2000 page 90, lines 11-18, that the trial judge stated twice she had not reviewed the police report though it was marked as an exhibit. The judge further stated that based upon the evidence before her she found the Defendant guilty of the charges. Appellant's claims that the trial court considered evidence not admitted and then erred in denying Appellant's Motion for a New Trial based upon the review of that evidence are without merit.

Appellant also claims that the prosecutor engaged in misconduct at the time of sentencing on November 21, 2000 by making repeated references to Appellant's arrests which did not

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result in convictions. In State v Shuler, 162 Ariz. 19, 780 P.2d 1067(App. 1989), the Court rejected a similar contention from the Appellant. In that case the Court determined that issues of the Defendant's criminal character and history were relevant aggravating factors in determining a sentence. However, a trial court may not aggravate a sentence based upon a mere report of an arrest without specific evidence of underlying facts to demonstrate criminal character. Id. at 21. Unfortunately, the record in this case does not demonstrate specific facts relating to each of Appellant's prior arrests which were presented to the trial judge. This Court must assume that the sentencing judge was influenced by the prosecutor's improper remarks concerning Appellant's previous arrests.

For all of the foregoing reasons,

IT IS ORDERED affirming the judgments of guilt of the Phoenix Municipal Court and remanding this matter back for sentencing consistent with this order.